

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, D.C. 20554

June 13, 2019

Copies sent by E-mail

ORDER

MAW Communications, Inc.,)
)
Complainant,)
)
)
v.) Proceeding Number 19-29
) Bureau ID Number EB-19-MD-001
)
PPL Electric Utilities Corporation,)
)
)
Defendant.)

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Counsel for Defendant

Dear Counsel:

On May 24, 2019, MAW filed a motion pursuant to sections 1.729 and 1.730(f) and (h) of the Commission's rules seeking to compel PPL to produce certain documents.¹ MAW's Motion is based on a challenge to the sufficiency of PPL's response to Interrogatory No. 2 of MAW's Revised First Set of Interrogatories.² Interrogatory No. 2 asked PPL to "[d]escribe in detail the information that PPL contends is missing from each of MAW's 18 applications that PPL has marked 'Incomplete.'"³

¹ See Motion to Compel Production of Documents, File No. EB-19-MD-001 (filed May 24, 2019) (Motion).

² See *id.*

³ See Complainant's Revised First Set of Interrogatories to Defendants, File No. EB-19-MD-001 (filed Apr. 29, 2019) at 5. In a Supplemental Joint Statement filed on April 29, 2019, the parties stated: "PPL has agreed to allow MAW to narrow its First Set of Interrogatories, which sought identification of documents, in exchange for additional

PPL responded to that interrogatory in part with a direction to “see the reasons specified in Exhibit B for how each of these 18 applications is incomplete.”⁴ MAW asserts that Exhibit B “provides a list of certain applications” “along with a very limited explanation of why the application is incomplete.”⁵ Further, MAW asserts, the reasons PPL included on Exhibit B are “unclear” and “fail to match the descriptions provided in the PPL online application portal for the listed applications. . . .”⁶ The Motion does not request that PPL supplement its response to Interrogatory No. 2 to correct the alleged deficiencies. Instead, MAW seeks an order directing PPL to “produce screen shots of the portal pages or any other communication by PPL to MAW describing these applications to show the information provided about how they are incomplete.”⁷

PPL opposes the Motion on the following grounds, among others: (a) the requested documents are already available to MAW and thus MAW has failed to meet the requirement in section 1.730(b) of our rules that a requesting party show that information sought is “not available from any other source;”⁸ and (b) the Motion includes no certification that MAW made a good faith effort to resolve the dispute prior to filing its Motion, as required by rule 1.729(b).⁹

We deny the Motion on both of these grounds. Specifically, MAW has not shown that it lacks access to the “screen shots of the portal pages or any other communication by PPL to MAW” that it seeks in its Motion. In fact, MAW’s argument that the reasons listed on Exhibit B for finding applications incomplete “fail to match the descriptions provided in the PPL online application portal”¹⁰ suggests that MAW has access to the information contained on the screen shots it seeks. In addition, MAW has failed to comply with the requirement in section 1.729(b) that a movant certify that a good faith attempt to resolve the dispute was made prior to filing the motion.¹¹ Indeed, the Motion contains no indication that MAW asked PPL to supplement its interrogatory response before MAW filed this Motion.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1415 of the Commission’s Rules,

interrogatories; this agreement . . . is in lieu of MAW’s request to PPL to identify which of PPL’s identified documents were responsive to which of all of MAW’s interrogatories.” *See* Supplemental Joint Statement, File No. EB-19-MD-001 (filed Apr. 29, 2019).

⁴ *See* PPL Electric Utilities Corporation’s Responses to Complainant’s Revised First Set of Interrogatories, File No. EB-19-MD-001 (filed May 20, 2019) at 2.

⁵ *See* Motion at 2.

⁶ *See id.* MAW further asserts that, in all but two cases, the descriptions provided in the PPL online application portal is the only communication that MAW received concerning the applications, and that the portal descriptions simply state: “This application has been rejected due to errors or lack of clarity. The application should be reviewed and resubmitted once it has been fixed.” *See id.*; Motion at 2 n.2.

⁷ *See* Motion at 2.

⁸ *See* Opposition to Motion to Compel Production of Documents, File No. EB-19-MD-001 (filed Jun. 3, 2019) (Opposition) at 2 (citing 47 CFR § 1.730(b)). Section 1.730(b) provides that interrogatories filed under section 1.730(a) “shall contain an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.”

⁹ Opposition at 2 (citing 47 § CFR 1.729(b) which states: “Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion.”).

¹⁰ Motion at 2.

¹¹ Nothing in this Order should be construed as a ruling on the scope of a utility’s obligation under the Commission’s rules and orders to provide information to an attacher specifying all reasons for finding a pole attachment application incomplete.

47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's Rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Lisa Saks", is positioned below the title of the Federal Communications Commission.

Lisa Saks
Assistant Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission